

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: TOMMY AND DEBRA WEAVER Facility #63972 Cerro Gordo County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2008-AFO-36
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TO: Tommy and Debra Weaver
19729 170th Street
Rockwell, Iowa 50469

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Tommy and Debra Weaver for the purpose of resolving a construction permit violation at the Weaver's facility in Rockwell, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Michelle Johnson, Field Office 2
Iowa Department of Natural Resources
2300 15th St. S.W.
Mason City, Iowa 50401
Phone: (641) 424-4073

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Tommy and Debra Weaver own and operate confinement facility located at 19729 170th Street in Rockwell, Iowa (SE ¼ of the SE ¼ Section 30 and the NW ¼ of the NE ¼ Section 31, Owen Township, Cerro Gordo County, Iowa). The facility is a swine and beef confinement feeding operation with a 5,000 head, two building (2,500 head per building) swine finisher confinement feeding operation in Section 30 and a 1,300 head, two building (300 head and 1,000 head in each building) beef feeder confinement feeding operation in Section 31. The Weavers refer to this facility as Rock Pork, L.L.C.¹ and based on information submitted by the Weavers, the DNR has issued construction permits to the facility under the name Rock Pork, L.L.C. In 1972, the 300 head beef confinement feeding building was constructed. On September 30, 2005, Construction Permit CP-A2005-167 was issued for the 5,000 head swine confinement feeding operation. On August 16, 2007, Construction Permit CP-A2007-17 was issued for the 1,000 head beef confinement feeding operation.

2. Condition 4b of Construction Permit CP-A2007-17 states the following:
“Animals shall not be placed in the new beef cattle confinement building and manure shall not be stored in the new confinement building until all of the following are satisfied:

- b) Your engineer submits a certification that the new confinement building and manure storage areas were:
 - * Supervised by the engineer or his designee during critical points of construction.
 - * Constructed in accordance with the approved plans and specifications. If actual construction deviates from the approved plans, identify all changes and certify that the changes were consistent with the standards of DNR rules or statute.
 - * Constructed in accordance with the drainage tile removal standards of the 567 IAC 65.15(1), and including a report of the findings and action taken to comply with the subrule.
 - * Constructed in accordance with the minimum required separation distances of Iowa Code section 459.202, 459.203 and 459.310.”

3. On November 20, 2007, Debra Weaver contacted Eric Wiklund, DNR Field Office 2 environmental specialist, by telephone. Ms. Weaver indicated that cattle were being brought in on November 23, 2007, and she inquired whether anything needed to be done before the building was populated. Mr. Wiklund informed Ms. Weaver that the facility needed written DNR approval and informed her to contact Sara Smith, DNR construction permit engineer, regarding the permit requirements.

4. On November 21, 2007, Ms. Weaver contacted Ms. Smith by telephone. Ms. Weaver indicated that cattle were being brought in on November 23, 2007, and she inquired

¹Rock Pork L.L.C. is a registered company with the Iowa Secretary of State; however the DNR has been informed by the attorney for Rock Pork L.L.C. that the company Rock Pork L.L.C. has no involvement in the Weavers' facility and that the Weavers' have not been given the authority to operate under the name Rock Pork L.L.C.

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whether anything needed to be done before the building was populated. Ms. Smith informed Ms. Weaver that the construction permit required that a certification needed to be submitted to the DNR by the facility's engineer, Dennis Johnson. Ms. Weaver indicated she would contact Mr. Johnson.

5. On November 21, 2007, Mr. Johnson contacted Ms. Smith and indicated that he was not contacted before or during the construction at the Weavers' facility. Mr. Johnson stated that the Weavers wanted to bring cattle in on November 23, 2007 and asked what could be done to remedy the situation. Ms. Smith informed Mr. Johnson of the "as-built" construction certification, which would require some concrete and rebar testing. Mr. Johnson stated he would be going to the facility and would send the test results to Ms. Smith later in the day. Later in the day, Mr. Johnson left two voice mail messages for Ms. Smith informing her that the test results were satisfactory and that he would try to contact someone else in construction permitting. Late in the afternoon, Mr. Johnson contacted Ken Hessenius, DNR Field Office 3 Supervisor. Mr. Johnson informed Mr. Hessenius that all of the tests had been conducted and all of the results were acceptable. Mr. Johnson faxed the field data results to Mr. Hessenius. Mr. Hessenius gave Mr. Johnson verbal permission to populate the facility. On November 23, 2007, Mr. Johnson faxed the final report to Mr. Hessenius. In the final report, Mr. Johnson indicated his firm was not contracted to review the construction of the Weavers' facility at critical points, but rather the firm reviewed the in-place concrete and completed construction of the facility.

6. On December 6, 2007, DNR issued a Notice of Violation letter to Tommy Weaver for failing to comply with Conditions 4b & 4c of Construction Permit CP-A2007-17. The letter informed Mr. Weaver the matter was being referred for further enforcement.

7. On December 19, 2007, Michelle Johnson, DNR Field Office 2 environmental specialist, contacted Ms. Weaver. Ms. Weaver stated that two loads of cattle went into the building on November 25, 2007 and since that time the facility had been populated depending on the market.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 states that any provision referring to compliance with the requirements of this chapter as applied to animal feeding operations also includes compliance with conditions applicable to permits. The Weavers failed to demonstrate compliance with a condition of its construction permit.

Condition 4b of Construction Permit CP-A2007-17 requires that an engineer submits a certification that the new confinement building and manure storage areas were:

- * Supervised by the engineer or his designee during critical points of construction.
- * Constructed in accordance with the approved plans and specifications. If actual construction deviates from the approved plans, identify all changes and certify that the changes were consistent with the standards of DNR rules or statute.

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* Constructed in accordance with the drainage tile removal standards of the 567 IAC 65.15(1), and including a report of the findings and action taken to comply with the subrule.

* Constructed in accordance with the minimum required separation distances of Iowa Code section 459.202, 459.203 and 459.310.

The certification is to be submitted prior to the facility being populated. Mr. Johnson stated his firm was not present during the critical points of construction at the Weavers' facility and that his firm was not present until after the construction had been completed. The above stated facts indicate a violation of the construction permit.

V. ORDER

THEREFORE, it is hereby ordered and Tommy and Debra Weaver agree to do the following:

1. Submit an as-built application within 30 days of the date the Director signs this administrative consent order and shall take the necessary steps of obtaining an as-built permit; and
2. Pay a penalty of \$5,000.00 in accordance with the following payment schedule:
\$2,500.00 due March 15, 2009 and
\$2,500.00 due March 15, 2010.

VI. PENALTY

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$5,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – The Weavers gained an economic benefit by not having an engineer on site during critical points of construction. The Weavers saved a considerable amount of money in engineer fees. The Weavers also saved money in that they were able to

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populate the facility without having the proper engineering certification for the critical points of construction. Therefore, \$2,000.00 is assessed for this factor

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. By not having an engineer present during the critical points of construction, the DNR has no way of ensuring the facility was built properly. Failure to comply with the construction permit conditions threatens the integrity of the animal feeding operations permitting program. Based on the above considerations, \$1,500.00 is assessed for this factor.

Culpability – The Weavers have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to Iowa law. The Weavers been issued construction permits in the past and should have been aware of the specific conditions that needed to be satisfied prior to the facility being populated. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Tommy and Debra Weaver. For that reason, Tommy and Debra Weaver waive the right to appeal this administrative consent order or any part thereof.

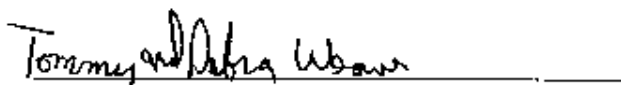
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in the administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD
Iowa Department of Natural Resources

Dated this 19 day of
Nov., 2008.



TOMMY AND DEBRA WEAVER

Dated this 8 day of
Nov, 2008.

#63972; Kelli Book; Field Office 2; Ken Hessenius; Gene Tinker; EPA; VIII.A.2

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